



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MARCH 15, 2023

IN THE MATTER OF:

Appeal Board No. 627169

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant voluntarily separated from employment without good cause (inadvertently and incorrectly stated on the Hearing Notice as an objection on the basis of misconduct).

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed December 8, 2022 (), the Administrative Law Judge overruled the employer's objection and sustained the initial determination of eligibility.

The employer appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed part time as a sales associate by the employer retail store for about 10 months. On August 2, 2022, the claimant submitted a letter of resignation, stating that she was resigning to pursue new career opportunities, and giving the employer notice that her last day of work would be

August 16, 2022. In response to the claimant's resignation letter, the employer accepted her resignation

effective immediately. The employer paid the claimant through August 2, 2022.

After applying for unemployment benefits, the claimant was found eligible to receive benefits by initial determination mailed on September 21, 2022. The determination informed the employer that if it was not satisfied with the determination, a hearing could be requested, and that if a hearing was requested, "you must provide complete details on why you object to the determination. Failure to state your objections with particularity may result in a limitation of the grounds you may raise at the hearing."

The employer objected to the claimant's eligibility by letter dated October 21, 2022, and sent to the Department of Labor by its representative. The letter stated that the employer was appealing the determination based on the fact that the claimant voluntarily quit to accept other employment, and that continuing work was available to her had she not quit. At the hearing, the employer contended that the claimant was not allowed to work out her notice period because the employer had already decided to terminate her employment, but had not yet told the claimant. This information was not disclosed to the Department of Labor sooner because it was not communicated to the employer's representative, who only learned of these additional facts the day before the hearing.

OPINION: 12 NYCRR 461.1(b) provides that when an employer requests a hearing on an initial determination which has held the claimant eligible to receive benefits, the employer, "must submit a written statement of the factual basis or specific events which such party contends are the grounds for denying benefits to the claimant. This statement of the factual incidents which are in issue should be of sufficient particularity as to inform the claimant of the facts to which the claimant must be prepared to respond at a hearing." There must be good cause to excuse the employer for not putting forth, at a time earlier than the hearing, the real factual incident that is to be litigated, and a Judge may, upon a showing of such good cause, allow the requesting party to introduce evidence on grounds other than that stated in the objection.

The evidence establishes that at the hearing, the employer sought to present evidence of the circumstances surrounding the claimant's separation from employment that was different from, and inconsistent with, the reason set forth in its letter objecting to the claimant's eligibility. The evidence also establishes that the failure to provide such information to the Department of

Labor when objecting to the claimant's eligibility, was due to the employer's failure to communicate the information to its representative until the day before the hearing. The fact that the employer's representative had not received information from the employer prior to sending its objection letter, or at any time prior to the day before the hearing, does not constitute good cause for the employer's failure to fully provide the factual incidents at issue surrounding the claimant's separation from employment, and does not excuse it. Thus, the employer is precluded from providing reasons for the claimant's separation other than those set forth in the employer's objection letter.

The employer's objection letter asserts that the claimant quit continuing employment to accept other employment. Resigning to accept other employment is considered a quit with good cause for unemployment insurance purposes. Accordingly, we find that the claimant was separated from employment under nondisqualifying circumstances.

DECISION: The decision of the Administrative Law Judge is affirmed.

The employer's objection, that the claimant should be disqualified from receiving benefits because the claimant voluntarily separated from employment without good cause, is overruled.

The initial determination holding the claimant eligible to receive benefits, is sustained.

The claimant is allowed benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER